

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
DEC 12 2005

JOHN PETRONE,

Plaintiff,

- against -

HAMPTON BAYS UNION FREE SCHOOL
DISTRICT, J BRUCE McKENNA, SAM
McALEESE, "JOHN DOE" and LORETTA
CAHILL,

Defendants.

TOWNES, United States District Judge:

By Report and Recommendation ("R&R"), dated November 1, 2005, Magistrate Judge Lindsay recommended that Defendants' letter motion to preclude testimony from Plaintiff's expert witness, Dr. Roy Lubit, be granted, in part, and denied, in part, allowing Dr. Lubit to testify as to the type of hearsay evidence normally relied upon by experts in his field, under *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and its progeny, but finding his testimony as to the quality of care provided by Plaintiff's treating psychiatrist irrelevant. This Court ADOPTS Magistrate Judge Lindsay's R&R in its entirety.

A district court judge may designate a magistrate judge to hear and determine certain motions pending before the Court and to submit to the Court proposed findings of fact and a recommendation as to the disposition of the motion. See 28 U.S.C. § 636(b)(1). Within ten days of service of the recommendation, any

P.M. _____
TIME A.M. _____

**MEMORANDUM
and ORDER**

03 CV 4359 (SLT)(ARL)

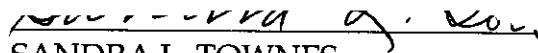
party may file written objections to the magistrate judge's report. *See id.* Upon *de novo* review of those portions of the record to which objections were made, the district court judge may affirm or reject the recommendations. *See id.*

The Court is not required to review the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 150, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985). In addition, failure to file timely objections may waive the right to appeal this Court's Order. *See* 28 U.S.C. § 636(b)(1); *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989).

In this case, objections to the R&R were due within ten days of service of the November 1, 2005 report. To date, no objections were filed with this Court. Upon review of the recommendation, this Court ADOPTS and AFFIRMS the R&R of Magistrate Judge Lindsay.¹

SO ORDERED.

Dated: Brooklyn, New York
December 7, 2005


SANDRA L. TOWNES
United States District Judge

¹The pinpoint citation for *In re Agent Orange Product Liability Litigation* should read 1245, rather than 1243. Additionally, the plaintiff's name in *Auppardo v. Suffolk County Vanderbilt Museum*, 19 F. Supp. 2d 52, 56 (E.D.N.Y. 1998), should read "Zuppardo."